

on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* Prior to the Department's issuance of a commitment to guarantee any loan or (if no commitment is issued) prior to guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, the Department will require compliance with procedures similar to those required by § 203.12(c)(2) of this title for FHA mortgage insurance.

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee if the property is not on trust or restricted land, the borrower must certify that the borrower lacks access to private financial markets. Borrower certification is the only certification required by HUD.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998]

§ 1005.106 What is the Direct Guarantee procedure?

(a) *General.* A loan may be processed under a Direct Guarantee procedure approved by the Department, under which the Department does not issue commitments to guarantee or review applications for loan guarantees before mortgages are executed by lenders approved for Direct Guarantee processing. The Department will approve a loan before the loan is guaranteed.

(b) *Mortgagee sanctions.* Depending on the nature and extent of the non-compliance with the requirements applicable to the Direct Guarantee procedure, as determined by the Department, the Department may take such actions as are deemed appropriate and in accordance with published guidelines.

[63 FR 48990, Sept. 11, 1998]

§ 1005.107 What is eligible collateral?

(a) *In general.* A loan guaranteed under section 184 may be secured by any collateral authorized under and not prohibited by Federal, state, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of

the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions against alienation applicable to trust or restricted land;

(2) A first and/or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Leasehold of trust or restricted land as collateral.* If a leasehold interest in trust or restricted land is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) The mortgagee or HUD shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the Indian tribe, or the Indian housing authority servicing the Indian tribe or the TDHE servicing the Indian tribe. The mortgagee or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to one of these three entities.

(4) *Priority of loan obligation.* Any tribal government whose courts have jurisdiction to hear foreclosures must enact a law providing for the satisfaction of a loan guaranteed or held by